***THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU**

+WRIT PETITION NO.10236 OF 1996

% 02-11-2005

1. Boya Akkamma and 3 others.

…PETITIONERS.

v.

$ The Special Deputy Collector,

Land Acquisition, H.L.C.,

Anantapur.

…. RESPONDENT.

! COUNSEL FOR PETITIONERS: SRI C.KODANDA RAM

^ COUNSEL FOR RESPONDENT: GOVERNMENT PLEADER FOR

LAND ACQUISITION.

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1994 AP 5

2. 1997(2) ALT 429

3. (1995) 4 SUPREME COURT CASES 428

4. AIR 1979 SUPREME COURT 404

5. (1994) 4 SUPREME COURT CASES 67

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO : 10236 of 1996

Between:

1. Boya Akkamma, W/o Akulappa,
   Mylarampalli village, Uravakonda Mandal,
   Anantapur District
and 3 others.

....PETITIONERS

AND

The Special Deputy Collector (Land Acquistion),

H.L.C. Anantapur.

.....RESPONDENT

* * *

ORDER:

Properties bearing Door Nos.5/26, 5/12, 5/8 and 5/15 at Mylarampalli village belonging to the petitioners were acquired under the provisions of the Land Acquisition Act (the Act) by the respondent, who, after making an enquiry, had passed an award on 09.06.1995 and issued notice under Section 12(2) of the Act to the petitioners on 25.08.1995 informing them that amount payable under the award would be paid to them on 26.8.1995. Alleging that they received that amount under protest on 26.8.1995 and 30.8.1995 and though they filed petitions on 04.10.1995 and 26.09.1995 seeking reference to the civil court for enhancement of compensation, respondent, without making a reference had sent a letter dated 24.02.1996 intimating them that he is not referring the case to civil court, as they received the amount without protest, petitioners filed this petition seeking a direction to the respondent to refer the case to civil court under Section 18 of the Act for determining compensation payable to them.

2. The respondent filed his counter-affidavit admitting the petitioners filing petitions for reference to the civil court on the dates mentioned, and contending that he did not refer the case to civil court since the petitioners received the compensation without protest.

3. The contention of the learned counsel for the petitioners is that since petitioners are not well versed in worldly affairs though they made a oral protest they did not write 'under protest' in the acquainttance, while receiving the amount of compensation paid to them by the respondent, and in any event since they filed petitions for reference within the period of limitation prescribed their prayer for reference cannot be rejected in view of the ratio in **Smt. Suram Ramakka V. The Dist. Collector, Karimnagar and another** and **Kotipalli Chitti V. Special Deputy Collector, Land Acquisition for ONGC, Rajahmundry**.

4. Placing strong reliance on **Wardington Lyngdoh and others V. Collector, Mawkyrwat** the contention of the learned Assistant Government Pleader is that since petitioners received the compensation awarded by the respondent without protest, merely because they filed applications for reference subsequently respondent is not bound to make a reference to civil court.

5. The facts in Wardington Lyngdoh case (3 supra) relied on by the learned Assistant Government Pleader are entirely different from the facts of this case, because in that case the owners of the acquired land i.e., appellants before Supreme Court, received the amount of compensation awarded by the land acquisition officer under an agreement which is marked as Ex.B. Referring to the said Ex.B the apex court observed as follows in para 6 of its judgment.

> "The High Court minutely examined evidence of all the witnesses and concluded that their claim of oral protest is belied by the written agreement Ex.B."

There, admittedly, is no such agreement Ex.B- in his case. It is also relevant to mention that the appellants before the apex court professed lack of knowledge of Ex.B. But the apex court clearly held that that stand is an after thought. So the said decision is of no help in deciding this petition.

6. While considering the meaning of the word 'required' used in Section 18 of the Act, a three judge bench of the apex court in **Mohammed Hasnuddin V. The State of Maharashtra,** held as follows in para 24 of its judgment:

" The word "required" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under Section 18 on the fulfillment of certain conditions. The first condition is that there shall be a written application by a person

> interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which an application shall be made. The power of the Collector to make a reference under Section 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso."

and repelled the contention that there must be a written protest before receiving the compensation mentioned in the award.

7. As per the ratio in **Ajit Singh and others V. State of Punjab and others** even after receiving the compensation granted by the land acquisition officer, the claimants, by making a written application within the time prescribed can seek a reference to the civil court because the apex court in that decision observed as follows:

" Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants."

8. In view thereof even though petitioners did not mention in the acquittance that they are receiving the amount 'under protest', their protest at that time can be implied since they filed a written protest within time before the respondent seeking a reference to the civil court, and so respondent is bound to refer the case of the petitioners to civil court for determination of the compensation payable to them.

9. Hence, petition is allowed with costs. Rule Nisi is made absolute and the respondent is directed to refer the case of the petitioners to civil court for determination of the compensation payable to them.

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C.Y.SOMAYAJULU, J.

Date: 02nd November 2005.

BSB

L.R. copy to be marked.